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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number: 07844-357001	
I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450. June 19, 2006 Date of Deposit _Mae Pattison_ Signature Mae Pattison Typed or Printed Name of Person Signing Certificate	Application Number 09/653,053	Filed September 1, 2000
	First Named Inventor Peter S. MacLeod	
	Art Unit 2626	Examiner Madeleine AV Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
    Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record
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☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34

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June 19, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below'.

☒ Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Peter S. MacLeod   Art Unit : 2626
Serial No. : 09/653,053   Examiner : Madeleine AV Nguyen
Filed : September 1, 2000
Title : DYNAMIC SELECTION OF RENDERING INTENT FOR COLOR PROOFING
TRANSFORMS

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW, IN REPLY TO ACTION OF MARCH 17, 2006

The pending independent claims are claims 1, 22, and 43. The examiner rejected claims 1, 22, and 43 for being allegedly unpatentable over U.S. patent number 5,835,098 ("Lipton") in view of what was allegedly well known in the art.

Lipton discloses a system for managing color profiles in computer documents. Abstract. A color profile allows a document to appear the same way no matter which input device was used to create it or which output device is used to show it. Column 1, lines 28-39. This is done by calibration of input and output devices so that the colors in the document can be adjusted to compensate for variations in device capabilities. For example, as a monitor ages, the colors displayed by the monitor can become less intense. Column 3, lines 9-23. A color profile for an older monitor might specify that color values should be increased to compensate for the monitor's age.

Computer documents can accumulate a number of color profiles, reflecting the various devices used to create the document. Column 1, lines 40-52. The color profiles in modern graphics systems amount to hundreds of kilobytes each. If each document were required to contain every graphics profile it used, the documents would balloon to unreasonable sizes.

Column 1, lines 53-67. Therefore, it is advantageous to keep color profiles in a centralized system repository. Column 3, lines 45-47.

Lipton discloses an API for a color profile manager which searches a repository of color profiles. An application specifies a desired color profile with a "profile identification." Column 3, lines 38-42; column 5, lines 60-65. The color profile manager then searches the repository and returns the desired color profile. Column 6, lines 26-27. Part of the profile identification is a "rendering intent." Element 31b of figure 3; column 4, lines 5-6. However the rendering intent is not used in the search. Column 6, lines 5-10.

Claim 22 recites a "means for automatically selecting a rendering intent from a plurality of rendering intents based on the color characteristics of the output device, the color characteristics being defined by the first device color profile." The examiner asserts that this limitation is disclosed by Lipton. The text the examiner relies on reads in context as follows. Column 5, line 60 to column 6, line 28, emphasis added:

> After the color profile manager 28 receives the request, the color profile manager 28 first searches for color profile objects 29 that match the profile description tag 31a, and then narrows in on the best match by finding color profile objects 29 that match the other parameters of the color profile identification 31 as well.

> The color profile manager 28 first searches the document entry section of the pool 32 for color profile objects 29 that match the Profile Description tag 31a of the color profile identification 31 in step 56. If no match is found, then the color profile manager 28 searches the remainder of the pool 32 for color profile objects 29 that match the Profile Header 31b in step 58. In a preferred embodiment, all the fields of the Profile Header 31b are used in the search except the rendering intent. Because the rendering intent can be easily changed, the search should not be allowed to fail when an object matches the Profile Header 31b in every respect except the rendering intent.

> The color profile manager 28 narrows the list of color profile objects 29 matching the Profile Description tag 21a and the Profile Header 31b by searching for color profile objects 29 that match the Modification Date 31d in step 60. When no color profile object 29 can be found that matches the Modification Date 31d, then the color manager 28 warns the client 4 in step 62 that proceeding to print/draw the document may produce incorrect results, which allows the client to then abort. If a color profile object 29 matches the Modification Date 31d, then it is determined if the color profile object's rendering intent matches the rendering intent specified in the Profile Header 31b in step 64. If the color profile object's rendering intent does not match the rendering in the Profile Header 31b, then the color profile

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object's rendering intent is changed to match the specified rendering intent in step 66, and the color profile object 29 is returned to the client 24 in step 68.

First, the examiner asserts, "The color profile manager 28 in the graphics system 22 selects the rendering intent based on the step 64 whether the color profile object's rendering intent of the system matches the rendering intent specified in the profile header 31b (Fig.5)." Office action of March 17, 2006. The applicant submits that this is incorrect.

Lipton teaches that a rendering intent is not used to search for a color profile. A rendering intent is supplied by the application as part of the profile identification. Element 31b of figure 3; column 4, lines 5-6. Much of the profile identification is used in the color profile search, but the rendering intent is not. Lipton teaches that it is undesirable to search with a rendering intent because rendering intents are easily changeable. Including the rendering intent in color profile searches would result in search failures when in fact a suitable color profile could be found. Therefore, the search is performed without regard to rendering intent. Column 6, lines 5-10. If a suitable color profile is found, but the rendering intent in the color profile does not match the specified color profile, the rendering intent in the color profile is simply changed to match what the application specified. Column 6, lines 22-27.

The examiner points to steps 64 and 66 as "select[ing]" a rendering intent. These steps, however, occur after the color profiles are searched in steps 56, 58, and 60. After step 60, it is certain which color profile will be returned to the application in step 68. Steps 64 and 66 merely alter the ascertained color profile to conform with what the application specifies. This modification of the rendering intent in the color profile is not a selection of a rendering intent, as recited in claim 22. Response of December 20, 2005, page 13. Whether or not the rendering intent is changed in step 66, the same rendering intent which was originally specified is returned to the application. *See* previous paragraph. Claim 22 recites "automatically selecting a rendering intent." Yet there is no selection of a rendering intent in Lipton. The recited limitation is not met.

Second, the examiner asserts, "It is noted that step 64 happens after step 60 that is whether both the color profile objects match the modification date. Only when the answer is yes, the color profile manager 28 automatically selects the rendering intent based on the result of step 64 without any input from the user or client." Office action of March 17, 2006. However, the relied upon portion of Lipton does not disclose that a search for a color profile can result in two

color profiles which have the same modification date. Moreover, the rendering intent is not automatically selected because the rendering intent that is returned to the application is the same as what was originally specified by a user. *See* below.

It is not possible for two color profiles to share the same "modification date." Lipton teaches that a color profile timestamp is used to distinguish color profiles. Even though Lipton frequently uses the shorthand "modification date" to refer to the timestamp, Lipton clarifies that the "modification date" actually includes a timestamp as well. Column 6, lines 48-58. It is important that this timestamp accurate distinguish color profiles because using a color profile from the wrong calibration can result in "expensive ... wasted" printing. Column 4, lines 7-19.

Lipton also uses the English singular to refer to the color profile that was found through the search. In column 6, Lipton writes,

> If a color profile object 29 matches the Modification Date 31d, then it is determined if the color profile object's rendering intent matches the rendering intent specified in the Profile Header 31b in step 64. If the color profile object's rendering intent does not match the rendering in the Profile Header 31b, then the color profile object's rendering intent is changed to match the specified rendering intent in step 66, and the color profile object 29 is returned to the client 24 in step 68.

This excludes the possibility that a search could result in two or more color profiles. Thus, no selection between the two or more color profiles occurs.

Additionally, Lipton does not disclose automatically selecting a rendering intent. Traditionally the user has specified the rendering intent. Application, page 9, lines 6-11. Lipton discloses that the rendering intent returned to an application is the same one originally specified, see above. The examiner cites to U.S. patent number 5,872,895 ("Zandee") for the proposition that "automatically selecting a rendering intent" can mean "selected by a user." However, the citation is out of context and not a definition, and even if it were a definition, Zandee's use would be non-standard. A standard definition for "automatic" is "without intervention by a human operator," *see* IBM Dictionary of Computing, 1991. The examiner's use of Zandee would effectively redefine "automatic" to mean "not automatic." It is not reasonable for the examiner to interpret claim 22 in such a non-standard way. Thus, because the rendering intent returned by Lipton is one that was originally specified by a user, Lipton does not disclose "automatically selecting a rendering intent," as recited by claim 22.

Third, the examiner asserts, "Step 64 should be based on the rendering intent of the device in order for the color profile manager to automatically select the rendering intent. In [other] words the automatic selection is based on both the rendering intent of the output device of the system and the rendering intent provided in the profile header. Since the rendering intent of the output device is also a color characteristic of the output device, the automatic selection of the rendering intent is based on the color characteristic of the output device." Office Action of March 17, 2006.

Neither the relied upon portion of Lipton nor the present application teaches or suggests that an output device can have a rendering intent. In fact, as Lipton discloses, the rendering intent is a characteristic of the color profile, not the output device. (If the rendering intent were a characteristic of the output device, then changing the rendering intent so easily as described in column 6, lines 5-28 would result in incorrect output. *Compare* column 6, lines 15-19.) The examiner's assertion that "the rendering intent of the output device is also a color characteristic of the output device" is unsupported by documentary evidence, and the examiner has not taken official notice of the assertion. The examiner must support the finding with adequate evidence. MPEP 2144.03(C) *See also* Response of December 20, 2005, page 13. ("The rendering intent ... is not a color characteristic of the output device.")

Independent claims 1 and 43 are allowable under the same rationale.

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Respectfully submitted,

Date: 6/19/06

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